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Corbin, Ltd. and Union of Needletrades, Industrial and Textile Employees, UNITE, AFL-CIO.
Case 9-CA-40153

March 22, 2005

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN
AND SCHAUMBER

The General Counsel seeks a default judgment in this case on the ground that the Respondent has failed to file an answer to the compliance specification.

On October 31, 2003, the National Labor Relations Board issued a Decision and Order,¹ that found the Respondent, Corbin, Ltd., violated Section 8(a)(5) and (1) of the Act by failing and refusing to bargain with the Union about the effects of its decision to close its Huntington, West Virginia and Cannonsburg, Kentucky facilities, and to lay off the employees in the bargaining units at those locations. The Board required the Respondent, among other things, to pay all bargaining unit employees no less than 2-weeks' wages, less any interim earnings, for the period commencing 5 days after the date of the Board's Order.

A controversy having arisen over the amount of back-pay due the employees, the Regional Director issued a compliance specification and notice of hearing alleging the amounts due under the Board's Order, and notifying the Respondent that it should file a timely answer complying with the Board's Rules and Regulations. Although properly served with a copy of the compliance specification, the Respondent failed to file an answer.²

By letter dated November 22, 2004, counsel for the General Counsel advised the Respondent and the bankruptcy trustee's counsel that no answer to the compliance specification had been received and that unless an answer was filed by November 29, 2004, a motion for default judgment would be filed. Thereafter, on January 4, 2005, counsel for the General Counsel sent a letter advising counsel for the bankruptcy trustee that no answer to the compliance specification had been received and stating that unless an answer was filed by January 11, 2005, a

motion for default judgment would be filed. Neither the Respondent nor the bankruptcy trustee filed an answer.

On January 19, 2005, the General Counsel filed with the Board a Motion for Default Judgment and memorandum in support, with exhibits attached. On January 25, 2005, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent's bankruptcy trustee filed a response.

Ruling on Motion for Default Judgment

Section 102.56(a) of the Board's Rules and Regulations provides that a respondent shall file an answer within 21 days from service of a compliance specification. Section 102.56(c) provides that if the respondent fails to file an answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without further notice to the respondent, find the specification to be true and enter such order as may be appropriate.

According to the uncontroverted allegations of the motion for default judgment, the Respondent, despite having been advised of the filing requirements, has failed to file an answer to the compliance specification. In his response to the Notice to Show Cause, the Respondent's trustee in bankruptcy asserts that on March 21, 2003, about 2 weeks before filing its bankruptcy petition, the Respondent "surrendered virtually all of its assets" to its lending bank, and has not engaged in any business since that date. The trustee contends that he has never operated the Respondent's business and therefore he "did not perceive the appropriateness of any collective bargaining with the Union." Based on these asserted facts, the trustee contends that "[t]o the extent, therefore, that the relief requested by the Union incorporates claims arising from conduct of Corbin on or after March 21, 2003, such claims should be disallowed in their entirety."

Further, the trustee argues that, in any event, he "fully reserves his rights with respect to the allowance and/or classification of any claims arising in this proceeding, as such claims may be treated in the Chapter 7 case pending before the United States Bankruptcy Court for the Southern District of New York."

We find no merit in the bankruptcy trustee's contentions. The Board found in the underlying unfair labor practice proceeding that the Respondent had unlawfully failed and refused since about April 23, 2003, to bargain with the Union about the effects of its decision to close its plants and lay off the employees. Thus, the trustee's argument that no relief is appropriate for any of the Respondent's conduct after March 21, 2003, involves issues that were or could have been litigated, and were already

¹ 340 NLRB No. 118.

² The Respondent is currently subject to Chapter 7 proceedings in bankruptcy. The compliance specification was served on both the Respondent and its trustee in bankruptcy. The compliance specification stated that the bankruptcy trustee could participate in the compliance proceeding and contest the specification on behalf of the bankruptcy estate.

decided by the Board, in the underlying unfair labor practice proceeding. Further, the Respondent's financial situation does not constitute a basis for denying the General Counsel's motion for default judgment.³ The issue in a compliance proceeding is the amount due and not whether a respondent is able to pay.⁴ Moreover, it is well established that the institution of bankruptcy proceedings does not deprive the Board of jurisdiction or authority to entertain and process an unfair labor practice case to its final disposition.⁵

In the absence of good cause for the Respondent's failure to file an answer, we deem the allegations in the compliance specification to be admitted as true, and grant the General Counsel's motion for default judgment. Accordingly, we conclude that the net backpay due the discriminatees is as stated in the compliance specification and we will order payment by the Respondent of those amounts to the employees, minus tax withholdings required by Federal and State laws.⁶

³ See e.g., *Judd Contracting, Inc.*, 338 NLRB 676 fn. 3 (2002), enfd. 76 Fed. Appx. 651 (6th Cir. 2003).

⁴ *Columbia Engineers*, 268 NLRB 337 (1983); *Star Grocery Co.*, 245 NLRB 196, 197 (1979).

⁵ See, e.g., *Cardinal Services*, 295 NLRB 933 fn. 2 (1989), and cases cited there. Board proceedings fall within the exception to the automatic stay provisions for proceedings by a governmental unit to enforce its police or regulatory powers. See *id.*, and cases cited therein; *NLRB v. 15th Avenue Iron Works, Inc.*, 964 F.2d 1336, 1337 (2d Cir. 1992). Accord: *Aherns Aircraft, Inc. v. NLRB*, 703 F.2d 23 (1st Cir. 1983).

⁶ The General Counsel is not seeking interest on the backpay amounts, as any interest would have accrued after the Respondent filed its petition in bankruptcy.

ORDER

The National Labor Relations Board orders that the Respondent, Corbin, Ltd., Huntington, West Virginia and Cannonsburg, Kentucky, its officers, agents, successors, and assigns, shall make whole the individuals named in the attached Appendix A, by paying them the amounts opposite their names, minus tax withholdings required by Federal and State laws. Summarizing these amounts, the Respondent is obligated to pay the employees backpay totaling \$91,466.09.

Dated, Washington, D.C. March 22, 2005

Robert M. Battista, Chairman

Wilma B. Liebman, Member

Peter C. Schaumber, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX A

Last Name	First Name	Hourly Rate	2 weeks pay (80 hours)	Interim Earnings	Net Backpay
Adams	Gary F.	\$ 6.28	\$ 502.63	\$ -	\$ 502.63
Adkins	Margaret	\$ 9.00	\$ 720.00	\$ 560.00	\$ 160.00
Adkins	Andrea	\$ 10.50	\$ 840.00	\$ 490.00	\$ 350.00
Adkins	Anita	\$ 6.87	\$ 549.91	\$ -	\$ 549.91
Adkins	Mae	\$ 8.68	\$ 694.51	\$ -	\$ 694.51
Adkins	Patti S.	\$ 13.00	\$ 1,040.00	\$ 384.00	\$ 656.00
Adkins	Sharon	\$ 7.50	\$ 600.00	\$ 544.00	\$ 56.00
Allen	Lois J.	\$ 12.43	\$ 994.72	\$ 700.00	\$ 294.72
Allen	Linda F.	\$ 9.95	\$ 796.00.	\$ -	\$ 796.00
Anderson	Linda	\$ 10.40	\$ 832.00	\$ -	\$ 832.00
Bailey	Cathy L.	\$ 13.17	\$ 1,053.52	\$ -	\$ 1,053.52
Barber	Cynthia J.	\$ 9.50	\$ 760.00	\$ 473.40	\$ 286.60
Barrett	Young Sook	\$ 5.40	\$ 432.00	\$ -	\$ 432.00
Bauers	Teresa A.	\$ 10.12	\$ 809.20	\$ 391.10	\$ 418.10
Bishop	Arlene	\$ 8.88	\$ 710.40	\$ 412.00	\$ 298.40
Blake	Dorothy C.	\$ 13.50	\$ 1,080.00	\$ -	\$ 1,080.00
Booth	Gladys K.	\$ 10.80	\$ 863.99	\$ -	\$ 863.99
Booth	Leslie	\$ 7.53	\$ 602.33	\$ 334.00	\$ 268.33
Brewer	Mary	\$ 9.95	\$ 796.19	\$ 600.00	\$ 196.19
Bridges	Gary	\$ 11.43	\$ 914.35	\$ -	\$ 914.35
Brown	Vassie	\$ 9.16	\$ 732.80	\$ -	\$ 732.80
Cade	Susan D.	\$ 6.17	\$ 493.97	\$ -	\$ 493.97
Call	Anna M.	\$ 10.72	\$ 857.60	\$ -	\$ 857.60
Callicoat	Wanda K.	\$ 8.48	\$ 678.60	\$ -	\$ 678.60
Carter	Brenda	\$ 11.30	\$ 904.00	\$ -	\$ 904.00
Carter	Sheila	\$ 10.70	\$ 856.33	\$ 480.00	\$ 376.33
Clay	Audrey	\$ 10.57	\$ 845.60	\$ -	\$ 845.60
Coeyman	Helen S.	\$ 9.95	\$ 796.10	\$ 640.00	\$ 156.10
Collier	Helen M.	\$ 10.00	\$ 800.00	\$ -	\$ 800.00
Collins	Dyanna F.	\$ 12.00	\$ 960.00	\$ 480.00	\$ 480.00
Collins	Linda F.	\$ 9.45	\$ 756.00	\$ -	\$ 756.00
Cooper	Brenda	\$ 10.85	\$ 868.00	\$ -	\$ 868.00
Cooper	David L.	\$ 11.64	\$ 931.07	\$ 700.00	\$ 231.07
Cooper	Sharon K.	\$ 8.41	\$ 672.96	\$ 230.00	\$ 442.96
Copley	Izetta J.	\$ 6.71	\$ 536.80	\$ -	\$ 536.80
Cornell	Pauline	\$ 9.71	\$ 776.55	\$ 480.00	\$ 296.55
Crawford	Marsha	\$ 11.44	\$ 915.38	\$ -	\$ 915.38
Criswell	Janice F.	\$ 16.30	\$ 1,303.80	\$ -	\$ 1,303.80
Crowder	William J.	\$ 13.64	\$ 1,091.22	\$ 480.00	\$ 611.22
Curnutte	Velda J.	\$ 10.50	\$ 840.00	\$ -	\$ 840.00
Davis	Brenda Gay	\$ 9.63	\$ 770.40	\$ -	\$ 770.40
Davis	Debbie	\$ 10.66	\$ 852.90	\$ 680.80	\$ 172.10
Dean	Dencil	\$ 9.79	\$ 783.20	\$ -	\$ 783.20
Eastham	Pong Y	\$ 7.23	\$ 578.62	\$ -	\$ 578.62
Eldridge	Carolyn S.	\$ 13.45	\$ 1,075.80	\$ -	\$ 1,075.80

Eplin	Lynnette	\$ 11.16	\$ 893.16	\$ -	\$ 893.16
Eplin	Laura L.	\$ 9.56	\$ 764.79	\$ -	\$ 764.79
Evans	Johnda	\$ 9.74	\$ 779.40	\$ -	\$ 779.40
Farley	Tempa E.	\$ 7.30	\$ 584.24	\$ -	\$ 584.24
Ferguson	James	\$ 11.08	\$ 886.40	\$ -	\$ 886.40
Ferguson	Samantha A.	\$ 10.00	\$ 800.00	\$ 560.00	\$ 240.00
Ferrell	Janet G.	\$ 6.99	\$ 559.40	\$ 112.50	\$ 446.90
Fitzpatrick	Brenda L.	\$ 7.75	\$ 620.00	\$ -	\$ 620.00
Fraley	Brenda L.	\$ 6.50	\$ 520.00	\$ 340.00	\$ 180.00
Fulford	Jennifer	\$ 9.54	\$ 763.00	\$ -	\$ 763.00
Ghazel	Rachida El	\$ 8.82	\$ 705.60	\$ -	\$ 705.60
Gilkerson	Connie	\$ 11.52	\$ 921.60	\$ -	\$ 921.60
Hammond	Brenda D.	\$ 10.00	\$ 800.00	\$ -	\$ 800.00
Hart	Robert G.	\$ 13.83	\$ 1,106.40	\$ 690.00	\$ 416.40
Harvey	Joan	\$ 9.68	\$ 774.46	\$ -	\$ 774.46
Havens, Jr.	Edison E.	\$ 14.78	\$ 1,182.04	\$ -	\$ 1,182.04
Hewlett	Phyllis L.	\$ 10.81	\$ 864.77	\$ -	\$ 864.77
Holbrook	Sabrina R.	\$ 10.45	\$ 836.00	\$ -	\$ 836.00
Holley	Linda S.	\$ 11.55	\$ 923.90	\$ -	\$ 923.90
Hughes	Carol	\$ 10.14	\$ 811.20	\$ 250.00	\$ 561.20
Hunt	Deborah	\$ 10.30	\$ 823.84	\$ -	\$ 823.84
Hutchinson	David L.	\$ 12.07	\$ 965.60	\$600.00	\$ 365.60
Ingram	Blanche Elaine	\$ 5.45	\$ 436.00	\$ -	\$ 436.00
Ison	Edna M.	\$ 13.88	\$ 1,110.26	\$ -	\$ 1,110.26
Johnson	Linda L.	\$ 13.33	\$ 1,066.61	\$ 636.00	\$ 430.61
Johnson	Juanita J.	\$ 7.78	\$ 622.40	\$ -	\$ 622.40
Kearns	Tywanna L.	\$ 13.03	\$ 1,042.07	\$ -	\$ 1,042.07
Kelley	Patty A.	\$ 9.95	\$ 796.00	\$ -	\$ 796.00
Kelley	Marsha A.	\$ 11.22	\$ 897.60	\$ -	\$ 897.60
Kennedy	Emma L.	\$ 10.27	\$ 821.20	\$ 791.20	\$ 30.00
Kirk	Judith	\$ 7.02	\$ 561.60	\$ -	\$ 561.60
Kiser	Charlotte	\$ 7.72	\$ 617.60	\$ -	\$ 617.60
Lester	Jacqueline R.	\$ 10.85	\$ 868.35	\$ 500.00	\$ 368.35
Lester	Catherine S.	\$ 7.72	\$ 617.28	\$ 434.40	\$ 182.88
Love	Juanita	\$ 8.00	\$ 640.00	\$ -	\$ 640.00
Lovejoy	Nancy K.	\$ 9.00	\$ 720.00	\$ -	\$ 720.00
Martin	Claude E.	\$ 12.00	\$ 960.00	\$ -	\$ 960.00
Maynor	Wynona A.	\$ 10.48	\$ 838.16	\$ -	\$ 838.16
McComas	Diana L.	\$ 12.53	\$ 1,002.74	\$ -	\$ 1,002.74
McHenry	Janice M.	\$ 10.35	\$ 828.00	\$ 630.00	\$ 198.00
McHenry	Betty	\$ 9.44	\$ 755.10	\$ 630.00	\$ 125.10
McKee	Teresa S.	\$ 7.16	\$ 572.64	\$ -	\$ 572.64
McKinney	Lewis	\$ 9.79	\$ 783.20	\$ -	\$ 783.20
Miller	Dewey	\$ 9.90	\$ 792.00	\$ -	\$ 792.00
Moore	Deborah	\$ 12.54	\$ 1,003.20	\$ -	\$ 1,003.20
Morrison	Rebecca L.	\$ 12.37	\$ 989.80	\$ 756.00	\$ 233.80
Muncey	Dorothy M.	\$ 7.40	\$ 592.27	\$ 500.00	\$ 92.27
Nance	Phyllis A.	\$ 9.25	\$ 740.00	\$ -	\$ 740.00
Newton	Judith	\$ 6.43	\$ 514.37	\$ -	\$ 514.37
Nibert	Sharon R.	\$ 9.95	\$ 796.00	\$ -	\$ 796.00

Nottingham	Rebecca V.	\$ 7.50	\$ 600.00	\$ -	\$ 600.00
Pauley	Donna J.	\$ 9.00	\$ 720.00	\$ 600.00	\$ 120.00
Pemberton	Bonnie K.	\$ 6.68	\$ 534.40	\$ 500.00	\$ 34.40
Penberton	Nyle	\$ 11.81	\$ 944.80	\$ -	\$ 944.80
Perkins	Dorothy	\$ 15.55	\$ 1,243.64	\$ -	\$ 1,243.64
Perrine	Melissa	\$ 11.71	\$ 936.80	\$ 460.00	\$ 476.80
Plybon	Jacqueline	\$ 12.66	\$ 1,012.82	\$ -	\$ 1,012.82
Plymale	Judy M.	\$ 8.02	\$ 641.60	\$ 294.00	\$ 347.60
Poston	Margaret A.	\$ 8.82	\$ 705.84	\$ -	\$ 705.84
Powers	JoAnn	\$ 9.22	\$ 737.76	\$ 300.00	\$ 437.76
Queen	Dorisa L.	\$ 7.25	\$ 580.00	\$ -	\$ 580.00
Rakes	Sherry L.	\$ 13.06	\$ 1,044.77	\$ 483.20	\$ 561.57
Ramey	Treva C.	\$ 13.42	\$ 1,073.70	\$ -	\$ 1,073.70
Ray	Paulette L.	\$ 12.74	\$ 1,018.91	\$ 718.40	\$ 300.51
Rigsby	Delores A.	\$ 10.84	\$ 867.29	\$ 570.00	\$ 297.29
Riley	Christa M.	\$ 9.10	\$ 728.00	\$ 450.00	\$ 278.00
Robinson	Candace	\$ 12.41	\$ 992.80	\$ -	\$ 992.80
Rogers	Deborah L.	\$ 9.93	\$ 794.30	\$ 689.80	\$ 104.50
Rouse	Edna L.	\$ 9.45	\$ 756.00	\$ -	\$ 756.00
Runyon	Gladys	\$ 11.17	\$ 893.60	\$ -	\$ 893.60
Russell	Sheila	\$ 7.25	\$ 580.00	\$ -	\$ 580.00
Saddler	Myrna	\$ 14.70	\$ 1,175.68	\$ -	\$ 1,175.68
Saddler	Douglas	\$ 10.50	\$ 840.00	\$ -	\$ 840.00
Salyers	Joyce A.	\$ 11.62	\$ 929.20	\$ -	\$ 929.20
Scarberry	Patricia L.	\$ 10.14	\$ 810.90	\$ 360.00	\$ 450.90
Sergent	Helen	\$ 9.29	\$ 743.12	\$ -	\$ 743.12
Shaffer	Georgia	\$ 7.00	\$ 560.00	\$ -	\$ 560.00
Shockley	Susie F.	\$ 13.46	\$ 1,076.96	\$ -	\$ 1,076.96
Shull	Brenda	\$ 15.79	\$ 1,263.51	\$ 896.00	\$ 367.51
Smith	Deborah	\$ 9.73	\$ 778.45	\$ 540.00	\$ 238.45
Smith	Shirley L.	\$ 13.97	\$ 1,117.36	\$ 788.20	\$ 329.16
Stephens	Tung C.	\$ 9.00	\$ 720.00	\$ -	\$ 720.00
Stephens	Teresa G.	\$ 8.95	\$ 715.92	\$ -	\$ 715.92
Stewart	Betty	\$ 11.04	\$ 883.20	\$ 350.00	\$ 533.20
Stewart	Lori	\$ 9.77	\$ 781.50	\$ -	\$ 781.50
Suiter	Christle	\$ 10.50	\$ 840.00	\$ -	\$ 840.00
Suttles	Julie	\$ 12.21	\$ 977.12	\$ 560.00	\$ 417.12
Tackett	Nan S.	\$ 6.00	\$ 480.32	\$ -	\$ 480.32
Taylor	Vickie L.	\$ 13.00	\$ 1,040.00	\$ 500.00	\$ 540.00
Thacker	Marcella	\$ 9.85	\$ 788.25	\$ -	\$ 788.25
Walker	Patricia	\$ 13.69	\$ 1,094.96	\$ -	\$ 1,094.96
Wallace	Phyllis A.	\$ 14.46	\$ 1,156.80	\$ 700.00	\$ 456.80
Warf	Tellia L.	\$ 7.48	\$ 598.19	\$ -	\$ 598.19
Watson	Myrtle	\$ 8.75	\$ 700.00	\$ -	\$ 700.00
Wagh	Melloydee	\$ 10.10	\$ 808.00	\$ -	\$ 808.00
Welch	Nora	\$ 11.95	\$ 956.16	\$ -	\$ 956.16
Wiley	Anita	\$ 10.61	\$ 849.04	\$ 588.80	\$ 260.24
Winters	Odeline	\$ 8.00	\$ 640.00	\$ -	\$ 640.00
Wiseman	Carolyn A.	\$ 11.39	\$ 911.42	\$ -	\$ 911.42
Wolfe	Debbie	\$ 6.29	\$ 503.56	\$ -	\$ 503.56

DECISIONS OF THE NATIONAL LABOR RELATIONS BOARD

Worthington	Garnet Ann	\$ 6.47	\$ 517.50	\$ 500.00	\$ 17.50
				TOTAL	\$ 91,466.09